

William L. Mentlik (WM 1540)
Roy H. Wepner (RW 6208)
Paul H. Kochanski (PK 0817)
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, NJ 07090-1497
Tel: 908.654.5000
Fax: 908.654.7866

Alfred B. Engelberg (*pro hac vice pending*)
1050 North Lake Way
Palm Beach, FL 33480
Tel: 561.848.7089
Fax: 561.848.4383

Attorneys for Defendant Hi-Tech Pharmacal Co., Inc.

Document Filed Electronically

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MERCK & CO., INC.,	:	
	:	Civil Action No. 06-266 (MLC) (JJH)
Plaintiff,	:	
v.	:	District Judge Mary L. Cooper
	:	Magistrate Judge John J. Hughes
HI-TECH PHARMACAL CO., INC.,	:	
	:	
Defendant.	x	
<hr/>		
MERCK & CO., INC.,	:	
	:	Civil Action No. 06-268 (MLC) (JJH)
Plaintiff,	:	
v.	:	District Judge Mary L. Cooper
	:	Magistrate Judge John J. Hughes
HI-TECH PHARMACAL CO., INC.,	:	
	:	
Defendant.	x	
<hr/>		

DECLARATION OF PAUL H. KOCHANSKI

I, PAUL H. KOCHANSKI, hereby declare and state as follows:

1. I am a partner with the law firm of Lerner, David, Littenberg, Krumholz & Mentlik, LLP, counsel to the defendant Hi-Tech Pharmacal Co., Inc., in this matter. I submit this

declaration in support of defendant's memorandum in support of its motion to dismiss for failure to state a claim or, in the alternative, for entry of final judgment against Hi-Tech.

2. Attached hereto as Exhibit A is a true and correct copy of U.S. Patent No. 4,797,413 ("the '413 Patent").

3. Attached hereto as Exhibit B is a true and correct copy of an excerpt taken from an Office Action dated November 10, 1987, from the file history of the '413 Patent.

4. Attached hereto as Exhibit C is a true and correct copy of an excerpt taken from a response dated March 10, 1988, from the file history of the '413 Patent.

5. Attached hereto as Exhibit D is a true and correct copy of the terminal disclaimer under 37 C.F.R. § 1.32(b), filed by Merck.

6. Attached hereto as Exhibit E is a true and correct copy of the Notice of Final Determination dated March 20, 1997.

7. Attached hereto as Exhibit F is a true and correct copy of proposed regulations to implement patent term extensions under 35 U.S.C. § 156, published by the United States Patent and Trademark Office on July 30, 1986.

8. Attached hereto as Exhibit G is a true and correct copy of the final rule amending its Rules of Practice with respect to the grant of patent term extensions and adopted proposed rule 1.775, now 37 C.F.R. § 1.775, issued by the United States Patent and Trademark Office on March 24, 1987.

I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: March 1, 2006

Paul H. Kochanski
Paul H. Kochanski